

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ADAM A. JAMISON,

x

Plaintiff, : REPORT AND RECOMMENDATION

-v.- : 07 Civ. 5540 (GEL) (GWG)

FIRST DEPUTY CLERK MURRAY, et al.,

:

Defendants. :

x

GABRIEL W. GORENSTEIN, United States Magistrate Judge.

The complaint in this matter was filed on June 11, 2007. As of September 13, 2007, no return of service had been filed with the Court as to any of the defendants. Accordingly, the Court issued an order on that date informing plaintiff that he was required either to serve the summons and complaint on or before October 13, 2007, or to seek an extension of this deadline by showing good cause for his failure to effectuate service. This order specifically informed the plaintiff that his case could be dismissed if he failed to comply with these directives.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

The 120-day period permitted under Rule 4(m) has expired. To date, there has been no proof of service filed with respect to any of the defendants in this matter. Nor has there been an application for an extension of time that shows good cause for such failure. In addition, the Court's clerk has learned from the Marshal's Service that plaintiff never requested that it effectuate service on his behalf.

The Court notes that while the September 13 Order was mailed to plaintiff at the address provided on the complaint (at the Mid-State Correctional Facility), the mailing was returned to the Court with a label indicating "Return to Sender, Attempted – Not Known, Unable to Forward." In addition, there was a hand notation of "7/3/07 – paroled" and the address "400 E. 30 St., NY NY." The New York State Department of Correctional Services' website similarly

reflects that plaintiff is no longer at the Mid-State Correctional Facility.

The fact that the mailing has been returned as undeliverable, however, should have no bearing on the dismissal, as it is plaintiff's responsibility to apprise the Court of his current address. See generally Ortiz v. United States, 2002 WL 1492115, at *2 (S.D.N.Y. July 11, 2002) (dismissing case for failure to prosecute where “[p]laintiff has not even fulfilled his minimal obligation to keep the pro se office of this Court informed of his change of address”).

For the above reasons, and because there is no reason why the Court should exercise its discretion to grant an extension of the service period in the absence of good cause, see Zapata v. City of New York, — F.3d —, 2007 WL 2742612 (2d Cir. Sept. 20, 2007), this case should be dismissed without prejudice pursuant to Rule 4(m).¹

**PROCEDURE FOR FILING OBJECTIONS TO THIS
REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have ten (10) days from service of this Report to file any objections. See also Fed. R. Civ. P. 6(a), (e). Such objections (and any responses to objections) shall be filed with the Clerk of the Court, with copies sent to the Honorable Gerard E. Lynch, 500 Pearl Street, New York, New York 10007. Any request for an extension of time to file objections must be directed to Judge Lynch. If a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal. See Thomas v. Arn, 474 U.S. 140 (1985).

SO ORDERED.

Dated: November 6, 2007
New York, New York



GABRIEL W. GORENSTEIN
United States Magistrate Judge

Copy mailed to:

Adam A. Jamison
c/o 30th Street Men's Shelter
400 E. 30th Street
New York, NY 10016

¹ The Court will mail a copy of this Report and Recommendation and the September 13 Order to the plaintiff at the shelter address. If he is there, this mailing will give plaintiff one further opportunity to object to dismissal and to provide good cause for his failure to ask the Marshal's Service to effectuate service.